

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JAMES MERNKA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. <u>CIV-16-241-M</u>
)	
UNITED HEALTHCARE)	
SERVICES INC.,)	
)	
Defendant.)	

NOTICE OF REMOVAL

Defendant United Healthcare Services, Inc., through undersigned counsel, hereby removes the above-captioned action from the District Court for the State of Oklahoma, Canadian County to the United States District Court for the Western District of Oklahoma pursuant to 28 U.S.C. §§ 1331, 1332, 1441, and 1446, and respectfully files this Notice of Removal, stating:

1. On information and belief, Plaintiff James Mernka sent a copy of the Summons and Petition to the Oklahoma Insurance Department, as the alleged designated agent for service of process of a foreign insurance company doing business in the State of Oklahoma, by U.S. Mail.

2. The Summons and Petition was received by the Oklahoma Insurance Department on February 10, 2016 according to the date stamp on the Summons.

3. In accordance with 28 U.S.C. § 1446(b), this Notice of Removal is filed within thirty (30) days after receipt of a copy of the Summons and Petition by the Oklahoma Insurance Department.

4. Removal of this action is proper because this action presents a federal question over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1331.

5. In this case, among other things, Plaintiff asserts claims for recovery of benefits allegedly owed under the Bloom Electric Services, LLC employee benefit plan (the “Plan”), which is governed by 29 U.S.C. § 1001, et seq., the Employee Retirement Income Security Act of 1974 (“ERISA”).

6. Defendant is alleged to be the insurance company that issued, sponsored and administered the disability coverage made available to participants in the Plan.

7. Plaintiff is seeking recovery of disability benefits under the Plan and alleges that Defendant "denied the claim" for disability benefits and "refused to reinstate Plaintiff's benefits[.]"

8. Plaintiff seeks recovery of "all accrued and accruing benefits" available under the Plan.

9. Plaintiff alleges that "[t]his is an action brought pursuant to [ERISA]" and "jurisdiction pursuant to ERISA."

10. The Plan is an “employee welfare benefit plan” under 29 U.S.C. § 1002(1) and is governed exclusively by ERISA.

11. Plaintiff's claims “relate to” an employee welfare benefit plan and fall within the scope of ERISA’s civil enforcement provisions. *See* 29 U.S.C. §§ 1132, 1144.

12. As the above-entitled action is a civil suit seeking recovery of benefits under an employee welfare benefit plan arising under ERISA, this Court has original jurisdiction of the above-entitled action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. §§ 1132, 1144, without respect to the amount in controversy or citizenship of the parties. As a result, removal of this action to this Court is proper pursuant to 28 U.S.C. §§ 1441 and 1446, as all rights, duties and obligations of the parties are exclusively defined and controlled by ERISA.

13. On information and belief, removal of this action is also proper pursuant to 28 U.S.C. § 1132.

14. In the Petition, Plaintiff fails to plead the jurisdictional limits as required by Oklahoma law and does not identify an amount at issue.

15. On information and belief, the amount at issue may exceed \$75,000.

16. This action also involves citizens of different states.

17. Plaintiff alleges that he is an Oklahoma resident.

18. Defendant is a Minnesota corporation with its principal place of business in Minnetonka, Minnesota.

19. This Court therefore has original jurisdiction over this action pursuant to 28 U.S.C. § 1332 and removal of this action to this Court is proper pursuant to 28 U.S.C. §§ 1441 and 1446.

20. A true and correct copy of all documents on file with the District Court for the State of Oklahoma, Canadian County, are attached hereto as Exhibits 1, 2, 3, 4.

21. Notice of Removal will be provided to the District Court for the State of Oklahoma, Canadian County.

22. Notice of Removal is being provided to Plaintiff as required by 28 U.S.C. § 1446(d).

WHEREFORE, Defendant requests that the above-entitled action pending against them in the District Court for the State of Oklahoma, Canadian County, be removed to this Court.

Respectfully submitted,

S/ Rodney C. Ramsey
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UNITED HEALTHCARE
SERVICES, INC.

CERTIFICATE OF SERVICE

I certify that on the 11th day of March, 2016, a true and correct copy of the above and foregoing document was served upon the above named plaintiffs, by mailing said copies to plaintiffs' attorney of record at the following address:

Roy S. Dickinson
1408 Winding Ridge
Norman, OK 73072

Further, a copy of the above and foregoing document was mailed to the Canadian County Court Clerk for filing that same date at the following address:

s/ Rodney C. Ramsey
Rodney C. Ramsey